and whether it be the last day of grace, or the day of maturity, when there is no grace, it is clear upon principle that as soon as payment is refused, the action may be commenced."

In other sections, the author shows that the authorities "are like Swiss troops, fighting on both sides." Secs. 1207–1210.

As to the indorser, the rule seems to be that no action can be commenced against him until the notice is duly mailed, but the holder need not wait until the notice is received. If mailed on the day of dishonor, action may be instituted against the indorser on that day, as in the case of the maker. 2 Daniel, Neg. Instr., sec. 1212.

POLICE POWER—CITY ORDINANCE REGULATING WEIGHT OF BREAD—LIBERTY OF CONTRACT.—An ordinance of the city of Buffalo forbade the sale of bread by any licensed baker in loaves of less than a prescribed weight. In a prosecution for breach of the ordinance it was *Held*, that the ordinance was invalid as an unlawful interference with the liberty of the citizen. *City of Buffalo* v. *Collins Baking Co.*, 57 N. Y. Supp. 347.

As said by the court, the police power under which the law may interfere with one's private business, is confined to protection of the life, health, comfort, and property of the citizen. Here, there was no question of the protection of any of these. Loaves weighing less were as wholesome as those of greater weight, and no question of false weight was involved. The smaller loaves were sold at a proportionately less price.

"'Liberty,'" said the court, quoting from *People* v. *Gillson*, 109 N. Y. 399 (17 N. E. 345), "in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation."

In *Allgeyer* v. *Louisiana*, 165 U. S. 578, the Supreme Court of the United States for the first time construed the term "liberty" in the Fourteenth Amendment, as including the liberty of contract—as meaning "not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration," but as embracing "the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

MASTER AND SERVANT—TORT IN COURSE OF EMPLOYMENT.—The tortious act of a brakeman in throwing coal at a boy on the tender of an engine, by which he knocks him off or frightens him so that he jumps off, causing him to be run over and killed by the engine, is held, in *Pierce* v. *North Carolina R. Co.* (N. C.), 44 L. R. A. 316, to render the railroad company liable.

In *C. & O. R. Co.* v. *Anderson*, 93 Va. 650, it was held, contrary to rule generally prevailing in such cases, that a railroad company is not responsible for the act of a brakeman in throwing a trespasser from the train, in the absence of proof of his authority to eject trespassers, or that the custom for its brakemen to do so was known to the company.

The general principle is that the master is responsible for all the wrongs of

the servant done in the course of his employment, whether authorized or not. No engineer has authority to kill cattle on the track, yet if wrongfully done, whether wilfully or negligently, the company must pay the damage. In Mr. Bishop's excellent discussion of the master's liability, he remarks that it is often difficult to determine whether the act is in the course of the servant's employment or not, and adds: "One case about which there would probably be no disagreement, holds that if a brakeman kicks a person illegally attempting to board a train, the road is responsible, but not if the person is not so attempting. For, to keep intruders off the cars is within the proper functions of a railroad servant, so that if he employs improper means, the road must answer for it; but it is wholly outside of those functions to commit assault and battery on persons in the neighborhood of the track." Bishop's Non-Contract Law, 613. In other words, the courts will judicially take notice of the fact that it is within the course of the brakeman's employment to protect the rights and property of the company against trespassers. *Rounds* v. *Delaware etc. R. Co.*, 64 N. Y. 135.

In *Gerarty* v. *Stern*, 30 Hun, 426, a merchant was held liable for an assault committed by a clerk upon a customer, supposed to be a spy from a rival establishment, though there was no proof that the clerk had authority to assault spies from other establishments; so, where the driver of an omnibus, in supposed furtherance of his master's business, recklessly and wilfully drove into a dense crowd, in order to force a way through, the master was held responsible: *Eckert* v. *St. Louis Transfer Co.* 2 Mo. App. 36. So where a driver, in order to extricate the master's carriage, which had become entangled with others in a crowded street, wilfully struck the horses of another with his whip: *Croft* v. *Allison*, 4 B. & Ald. 590. See further illustrations in Shearman & Redfield on Neg. 147–150; 2 Thompson on Neg. 886–7; *Ware* v. *Canal Co.* (La.), 35 Am. Dec. 192 and note; *Noblesville etc. Co.* v. *Gause* (Ind.), 40 Am. Rep. 224 and note.

In a case just decided by the Supreme Court of Alabama, *Case* v. *Hulebush*, 26 South, 155, June 7, 1899, it is held that a tax collector is responsible for an assault made upon a citizen by his deputy, as the result of a quarrel in the tax collector's office, over an illegal fee demanded by the deputy. The court held that the tort was clearly in the course of the deputy's employment, though wholly unauthorized. In Mississippi the same doctrine was applied to the case of an assault by an express agent, in his office, growing out of a quarrel with the plaintiff in reference to an alleged overcharge on a shipment. *Richberger* v. *American Express Co.*, 18 South. 922. The note to *Pitchie* v. *Waller* (Conn.), 27 L. R. A. 161, contains an elaborate review of the authorities on this subject.

MUNICIPAL CORPORATIONS—SCROLL AS CORPORATE SEAL—ACTION OF COVENANT.—In *Dist. Columbia* v. *Camden Iron Works* (27 Washington Law Reporter, 462) it is held that a contract executed by the Commissioners of the District of Columbia, under their hands, with scrolls annexed, intended as an official act, has the force and effect of a deed or sealed instrument, and binds the corporation and not the individual Commissioners; and an action of covenant may be maintained against the District thereon, notwithstanding the corporate seal of the District is not affixed thereto.

It was contended by counsel for the District that the contract was not a specialty under the seal of the municipal corporation of the District of Columbia, but a